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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 603

KENNETH D. ENGLAND AND CONNIE J. ENGLAND,
Petitioners,

v.

UNITED STATES OF AMERICA, *Respondent.*

BRIEF AMICUS CURIAE OF ASSOCIATED INDUSTRIES OF NEW YORK STATE, INC.

In Support of the Petition for a Writ of Certiorari

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QUESTIONS PRESENTED

Whether an employee who is transferred to a new job location by and at the direction of his employer

must include in gross income amounts received from his employer in reimbursement for extraordinary moving expenses necessarily incurred by the employee solely as a result of his job transfer. Alternatively, if the employee must include such reimbursed expenses in gross income, whether the employee is entitled to deduct such expenses as ordinary and necessary business expenses.

INTEREST OF THE AMICUS CURIAE

This brief is filed pursuant to Rule 42 of the Revised Rules of the Supreme Court of the United States. Both counsel for petitioner and counsel for respondent have stated that the respective parties consent to the filing of this brief.

Associated Industries of New York State, Inc. has since its founding in 1914 served as the "voice of industry" in the nation's largest industrial state. The Association has approximately 1,400 member companies having offices and plants in every part of the State of New York. Both manufacturing and non-manufacturing companies, representing total business activity of many billions of dollars annually, are included within the membership.

A substantial number of the members of the Association conglomerately expend several million dollars yearly in moving transferred employees from one business location to another in the State of New York and around the country. Many thousand employees are involved in these moves. Most of these transferred employees receive reimbursements from their employers for at least some of the necessary out-of-pocket expenses connected with their moves. In most cases,

the Internal Revenue Service can be expected to claim that some part of these reimbursed amounts are taxable income to such employees if the opinion of the Court of Appeals for the Seventh Circuit in this case is allowed to stand. The taxation of reimbursements which merely repay the employee for expenses incurred in a move directed by and for the benefit of the employer imposes an unfair financial burden on the employee, which in many cases may have to be "picked up" by the employer through additional reimbursements to make the employee whole. In the alternative, many employees will no doubt be reluctant to accept a transfer for the employer's benefit if something is not done to relieve this burden. Accordingly, the present confusion in the case law regarding the tax status of reimbursed moving expenses directly and adversely affects both the members of the Association and their employees' morale and pocketbook.

The Association is filing this brief to emphasize to the Court the extremely important nature of this case and the effect it will have not only upon members of the Association and their employees, but to employers all over the country and to the many thousnd employees who are annually transferred to new job locations at the direction of and for the benefit of their employers.

ARGUMENT

This is a very important case to American industry and to the estimated 150,000 employees transferred annually from one city to another by their employers. The case is also of great relevance to the approximately 340,000 military personnel who are transferred annually and may soon be of great significance to civilian government employees as well.

Employers are faced with two problems—first, they find that when an employee is threatened with a tax on some portion of the reimbursed expense which he would not otherwise incur, he naturally becomes more resistant to changing his place of employment. This tends to reduce the ability of employers with multiple plant or office locations to move their employees about the country to best serve the needs of the business. Moreover, the employer will have a serious morale problem with employees who are moved if the employees find they have to pay taxes on reimbursed moving expenses incurred in a transfer made for the convenience of the employer.

Second, the employer who knows that the transferred employee will have to pay taxes on the amounts reimbursed may well feel obligated to reimburse the employee with something extra in an attempt to offset at least part of the additional tax liability. This procedure, if followed, will substantially increase the cost of moving transferred employees to employers.

Conversely, the employee suffers unjustly when he is forced to pay a tax upon reimbursement of expenses incurred on behalf of and at the request of his employer.

As pointed out by the petitioner, more than 150,000 private industry employees were transferred within the United States by their employers in 1964 and the number is likely to steadily increase.

In addition, over 340,000 servicemen will receive over $40,000,000 in 1965 in dislocation allowances. This money is received by servicemen in connection with moves required by the military services. The Internal Revenue Service has ruled, in Rev. Rul. 64-153, 1964-1 C.B. 70, that these dislocation allowances which are in-

tended to reimburse the servicemen for "such extra costs as lease forfeitures, temporary living charges in hotels and boarding houses pending establishment of a normal household, . . ." (the latter expense is the same as the largest part of the expense reimbursed in the *England* case) are includable in the gross incomes of the recipients. The military services have lodged a strong protest with the Internal Revenue Service in regard to this ruling (a copy of a letter from Norman S. Paul, Assistant Secretary of Defense (Manpower), to the Acting Cammissioner of Internal Revenue, is enclosed as Exhibit A).

It is thus quite obvious that a decision by the Supreme Court in this case will have a widespread effect throughout the country, both on private and government employees.

The effect of a decision by the Court in this case will, however, have even more far reaching effect than that which is suggested by the figures quoted above. As noted below, thousands of federal civilian employees who will be transferred to new job locations annually in the interest of the government also have a direct, although at the moment potential, interest in the outcome of this case.

There is presently pending in Congress (before the House Committee on Government Operations) proposed legislation (H.R. 10607) which would authorize reimbursement by the government of certain moving expenses of federal civilian employees which are quite similar to those involved in the instant case. H.R. 10607, 89th Cong., 1st Sess. (A copy of this bill is attached as Exhibit B.)

On September 13, 1965, Senator Tydings introduced into the Senate the equivalent of H.R. 10607. The

bill (S. 2516) was referred to the Committee on Government Operations. The Senator referred to the belief of the Civil Service Chairman, Mr. Macy, that the losses incurred by government employees in moving for the convenience of the government was "the most important single factor in the reluctance of government employees to move". Senator Tydings added emphatically that this factor must be eliminated. Congressional Record, 89th Cong., 1st Sess. pp. 22621-22622. If the Seventh Circuit decision is allowed to stand, this factor, however, cannot ever be wholly eliminated.

The moving expense bill would increase the now scanty reimbursements which the government provides for the employees which it moves about the country. Among other things, transferred government employees would be reimbursed for making one round trip (with spouse) to seek permanent resident quarters at a new official station, would be reimbursed for subsistence expenses for a certain limited period while occupying temporary quarters at the new official station, would be reimbursed for expenses incurred in selling an old house and acquiring a new one (other than loss on sale). These reimbursed expenses are of the same character as many of the reimbursed items upon which the taxpayers in the instant case have been required to pay a tax by the Court of Appeals for the Seventh Circuit.

H.R. 10607 has the active support of the Administration. The Honorable John W. Macy, Chairman of the Civil Service Commission, testified before the Executive and Legislative Reorganization Subcommittee of the Committee on Government Operations of the House of Representatives on September 1, 1965, in favor of H.R. 10607. He introduced into the record

the President's pay message delivered to Congress on May 12, 1965 (a copy of this message is attached as Exhibit C) in which the President urged that legislation be enacted to "establish a coordinated and equitable system for payment of moving expenses to employees transferred for the convenience and benefit of the government."

On May 20, 1965, the Civil Service Commission, in accordance with the President's pay message, submitted the proposed legislation which (with minor changes) is now H.R. 10607 and S. 2516 to the Speaker of the House and to the Vice President as presiding officer of the Senate. In its identical letters of transmittal to Speaker McCormick and Vice President Humphrey, the Civil Service Commission stated that the proposed legislation was designed to correct presently existing inequities which result upon the transfer of government employees. (A copy of the letter sent to the Speaker is attached as Exhibit D.) Since the transfers are made primarily for the benefit and at the request of the government, it was indicated that the government should bear the brunt of the expenses involved. The present arrangement, under which most employees lose substantial amounts of money when forced to change the location of a government job, has proven to be a deterrent to relocation. Agencies are forced to use less satisfactory personnel in many cases than would be necessary if employees were reimbursed for expenses incurred as the result of a transfer. Chairman Macy, writing for the Commission, concluded that "this is poor economy in the short run and is even poorer economy in the long run, for a reasonable degree of geographic mobility is an essential element in a sound career service."

It is quite clear that under the *England* decision, the purpose of the legislation proposed by the Civil Service Commission will be frustrated in large part as there is no reasonable basis for a belief that the Internal Revenue Service can treat government employees differently from employees in private industry. This is especially true in light of Rev. Rul. 64-153 which requires military personnel to include certain reimbursed moving expenses in gross income. The following exchanges which took place between Congressmen Erlenborn and Holifield and Chairman Macy at the very recent hearings (September 1, 1965) on H.R. 10607 conclusively demonstrate the importance the *England* case will have to untold thousands of government employees assuming the enactment of H.R. 10607. (Stenographic transcript of Hearing, pp. 15-18 —not yet formally published.) *

> "Mr. Erlenborn. If legislation such as this [H.R. 10607] were to pass, what would our expectations be as to the taxability to the employee of the amounts that are allowed to him?
>
> Mr. Macy. This is an issue that is before the Commissioner of Internal Revenue. I think a comment on that is beyond my competence to make. My own view would be that these are reimbursements of expenses necessary in the line of work and I don't believe they should be taxable as extra income.
>
> Mr. Erlenborn. If they were taxable, then the employee still would not be fully reimbursed?
>
> Mr. Macy. Correct. The basic objective of the legislation would be partially lost if it were necessary to pay taxes on the reimbursement.

* * * * *

* Printed Hearings, pages 48 and 49.

Mr. Holifield. [Under the bill, the moves are] for the benefit of the government and not primarily for the benefit of the employee.

Mr. Macy. That is the key phrase in this, for the convenience or the benefit of the government. And I have tried to explain to those I have talked to on this legislation that this is not a fringe benefit. This is a reimbursement of costs which the employee must make in order to carry out the instructions of his government, his employer.

Mr. Holifield. I think Mr. Erlenborn brought up a very important point because if a man is going to receive $2,000, for instance, for moving and have to pay 30 percent of that or 25 percent of that back in income tax, why it certainly is not doing what you expect the legislation to do.

Mr. Macy. Exactly, and I feel that the basic philosophy behind this legislation would indicate that this is not compensation, this is not additional income. This is reimbursement, and therefore should not be taxable."

Chairman Macy estimated at the hearings that the government transfers in excess of 35,000 employees annually and that 83% of these people lose money by reason of the move. H.R. 10607 is designed to reduce this loss substantially but such effort will be frustrated to a substantial degree if the *England* case is not reversed.

The effect of the *England* case reaches far beyond the taxpayers involved who are in effect engaged in a class suit on behalf of employees generally. The present impact of the case is that it affects over 150,000 employees in private industry who are transferred annually (including an estimated 450,000 employees whose tax returns are open for years 1962, 1963, and 1964)

and 340,000 military personnel transferred annually (including an estimated 800,000 or 900,000 servicemen whose tax returns are open for years 1962, 1963, and 1964). In addition, an estimated 35,000 government civilian employees yearly will have a direct interest in the case if H.R. 10607 is enacted as seems likely. Although the tax principles involved in the case are not terribly complicated, the result of the *England* case will have far reaching importance and as such it is fitting and proper that the matter be definitively passed on by the Supreme Court.

The Congress of the United States would seem to be in full agreement with this view. The House Ways & Means Committee, in its report accompanying the Revenue Act of 1964, stated in regard to section 217 (allowing a new employee or a nonreimbursed old employee to deduct certain moving expenses):

> "Your committee's bill limits the categories of expense for which a deduction is available to new employees or those who are not reimbursed for moving expenses, to the three categories specified above, which, by ruling, the Internal Revenue Service recognizes as excludable for existing employees. No inference should be drawn from this, however, that moving expense exclusions under existing law are necessarily limited to these three categories of expenses. However, since by administrative ruling, these categories are clearly excludable in the case of existing employees who are reimbursed, your committee believed that deductions for such expenses should also be made available to new employees and nonreimbursed employees as well. *The question of whether the exclusion for existing employees extends beyond these three categories is left for judicial interpretation.*" [Emphasis supplied.] House Report

No. 749, p. 59. Almost identical language appears in Senate Report No. 830, p. 71.

It is clear from the above statement and from the hearings on H.R. 10607 that Congress is hopeful that the courts will decide once and for all whether reimbursed moving expenses give rise to taxable income.

CONCLUSION

It is respectfully submitted that the issues presented in the instant petition for writ of certiorari involve substantial statutory questions. This amicus curiae, therefore, urges the Court to grant a writ of certiorari herein.

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EXHIBIT A

August 6, 1964

Mr. Bertrand M. Harding
Acting Commissioner of Internal Revenue
Internal Revenue Building
12th & Constitution Avenue, N.W.
Washington, D. C. 20224

Dear Mr. Harding:

A recent Internal Revenue Ruling, 64-153, I.R.S.-21, 9 is so potentially harmful to the welfare of our personnel and to the maintenance of an adequate number of career servicemen that we must respectfully request that you reconsider this Ruling. Consistent with the long established Department of Defense policy that tax benefits for servicemen be sought only when the equities and special circumstances of their calling justify them, we have carefully considered the advisability of seeking a reconsideration of your holding.

Only after our research clearly demonstrated that acquiescence in this Ruling would impose an unforeseen and unwarranted tax burden on the career serviceman and his dependents did we decide to submit this analysis of Rev. Rul. 64-153.

This Ruling concludes that dislocation allowances authorized in section 407 of title 37, United States Code, are includible in gross income, evidently without deduction of dislocation expenses, since they are made

> "to cover costs which are merely related to, but not a part of, moving expenses incurred in transporting a member's dependents, household goods, and personal effects to a new duty station and are in addition to allowances designed to defray moving expenses."

Implicit in such an analysis is the recognition that if dislocation expenses are moving expenses they are ex-

cludable from gross income to the extent expended on the move. Rev. Rul. 54-429, C.B. 1954-2, 53.

We note that the House of Representatives Report on the dislocation allowance provision referred to the expenses covered by these allowances as "moving expenses" and we are unable to agree with the conclusion of your Ruling.[1] No subsequent change in congressional intent after enactment of the dislocation allowance provision has been found and, therefore, we feel Rev. Rul. 64-153 is contrary to the clearly expressed intention of Congress.[2] No congressional enactment since 1955[3] is particularly relevant to this inquiry except the Revenue Act of 1964. Significantly the Treasury Department in its submission of proposals for this Act sought to preclude any possibility of adverse tax consequences to military personnel by stating:

> "A special rule would be provided to permit members of the uniformed services to exclude reimbursed moving expenses from gross income. This rule would be in recognition of the fact that members of the uniformed services move very frequently, have little or no control over such moves, and are carefully limited as to the amount of the reimbursements they receive."

Hearings on the President's 1963 Tax Message, 97 (Ways & Means Comm.), 88th Cong., 1st Sess. (1963)

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[1] H.R. Rep. No. 90, 84th Cong., 1st Sess. 11 (1955), on H.R. 4720, enacted as the Career Incentive Act of 1955 which first authorized the dislocation allowance. Section 253(c) of title 37, U.S. Code, referred to in Rev. Rul. 64-153 was codified by Public Law 87-649, September 7, 1962, as section 407 of title 37.

[2] The intent of Congress can govern on tax matters even though it is expressed in other than title 26 of the United States Code, see, *e.g.*, 38 U.S.C. 3101(a). This binding intent is most often found in the legislative history of congressional enactments. See, *e.g.*, Rev. Rul. 63-258, C.B. 1963-2, 22.

[3] See Note 1 *supra*.

In enacting the 1964 Revenue Act, the Congress refused to limit the exclusion of reimbursements for moving expenses of *existing employees*[4] to the two specified categories of expenses deductible by new employees or unreimbursed existing employees. H. R. Rep. No. 749, 88th Cong., 1st Sess. 59 (1963).[5] Therefore, "no inference should be drawn from" the legislative history of the 1964 Act that dislocation expenses, partially reimbursed by a dislocation allowance are not moving expenses, especially where Congress has declared them to be such.[6] See *ibid.*

Rev. Rul. 64-153 is thus demonstrably without justification in the legislative history of the 1964 Act relating to moving expenses. The Ruling is also at odds with the intent of Congress to ease the tax treatment of moving expenses and the earlier statement of Congress that dislocation expenses are "moving expenses."[7] Even more perplexing is the variance of the Ruling from the declaration by the Treasury that military reimbursements for the moves of its servicemen are not in the nature of gross income.

Moreover, no mention is made of the basic question on which the tax status of military allowances turns: Did Congress intend the allowance to be compensatory and, therefore, income, or noncompensatory and, therefore, not income? The Internal Revenue Service has recognized that the intent of Congress in authorizing an allowance is of paramount concern in determining whether it is includible in a serviceman's gross income. Rev. Rul. 63-258,

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[4] The dislocation allowance is not paid to persons ordered from their homes to their first duty stations. 37 U.S.C. 407.

[5] The Senate adopted the House's policy on this matter. S. Rep. No. 830, 88th Cong., 2d Sess. 71-72, p. 219 (pt. 2) (1964).

[6] Note 1 *supra.*

[7] *Ibid.*

C.B. 1963-2, 22. Your office has also recognized that payments to or in behalf of a serviceman or his dependents which "are solely intended to offset the direct added expenses which would not have been incurred except for the" exigencies of the service are "not intended to be compensatory in nature." *Id.* at 23. Like the foreign duty housing and cost-of-living allowance, the dislocation allowance "is not intended to be compensatory, but is made solely to insure that members of the uniformed services do not incur financial loss" as a result of personal actions dictated by national defense considerations. Rev. Rul. 1961-5, C.B. 1961-1, 8, 9.

That dislocation allowances were intended by Congress to be noncompensatory in nature is demonstrated by analysis of the legislative history of the provision. In response to a very strongly worded message from the President concerning the unfair financial burdens imposed upon our career military personnel by their frequent required moves, Congress passed the Career Incentive Act of 1955[8] which, *inter alia,* authorized dislocation allowances. Statistical surveys showed that servicemen were losing amounts averaging from $200 to $427 in "unavoidable expenses in connection with uprooting, transporting, and reestablishing a normal household" on permanent changes of station required by the services.[9] Dislocation allowances authorized by Congress and paid under appropriate regulations of the defense establishment are equal to one month's basic allowance for quarters for the grade of the serviceman entitled thereto. The allowance is paid only to a member of the armed forces whose dependents are authorized to and do move with him on a permanent change

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[8] H.R. Rep. No. 90, *supra* note 1, at 1 and *passim.*

[9] *Id.* at 11.

of station. As such, with minor exceptions, it is paid only to career enlisted men and officers.[10]

> "Thus the . . . (dislocation allowance) provides for a reasonable means of *partially reimbursing* a serviceman for expenses in connection with moving his family and household to a new duty station.'"[11]

Significantly, the President referred to the dislocation allowance as a "nonpay benefit . . ." in his message to Congress on the inadequacy of military pay and allowances. S. Rep. 125, 84th Cong., 1st Sess. 33 (1955). The intent of Congress, as found in the legislative history of the dislocation allowance, is clearly that it was not intended to be compensatory in nature.[12]

Furthermore, your office has held that a quarters allowance paid in addition to the basic allowance for quarters is excludable from gross income and, in the words of that holding,

> "since the instant allowance is paid as an additional . . . quarters allowance, it is clear that it is not a travel allowance of the kind includible in gross income under

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[10] See, e.g., Army Regulation 37-106, ch. 12-2a., "a member in pay grade E-4 with over 4 years of service or any higher grade is entitled to a dislocation allowance when the member is authorized transportation of dependents at Government expense in connection with a permanent change of station."

[11] H.R. Rep. No. 90, *supra* note 1, at 11 (emphasis supplied).

[12] The Internal Revenue Service even recognizes that where a payment made by a nongovernmental employer is not compensatory in nature, it is not income to the employee. See, *e.g.*, Rev. Rul. 62-113, C.B. 1962-2, 10. The courts go far beyond the Service's position on the excludability of reimbursements for extraordinary expenses connected with a move by an employee. See *John E. Cavanagh*, 36 T.C. 300 (1961) (Dec. 24, 841), *non acq.* 1962-1 C.B. 6: *followed, Kenneth D. England*, 641 USTC par. 9282 (S.D. Ill. 1964). *Cf. Walter H. Mendel*, 41 T.C. 32 (1963) (Dec. 26, 349).

section 1.61-2(b) of the regulations. Therefore, such allowance qualifies for exclusion from gross income under section 1.61-2(b) of the regulations."

Rev. Rul. 61-11, C.B. 1961-1, 9, 10; see *Clifford Jones*, 60 Ct. Cl. 552 (1925), T.D. 3724, C.B. IV-2, 136 (1925). Rev. Rul. 61-11 permitted the exclusion of a per diem allowance from gross income; certainly this holding clearly supports our alternative position that the dislocation allowance which is equal to one month's basic allowance for quarters need not be deemed a moving expense reimbursement to be excludable from gross income.

In the event that you adhere to the conclusion stated in Rev. Rul. 64-153 that dislocation allowances are includible in gross income, it is requested that consideration be given to applying the Ruling to taxable years beginning after May 25, 1964 only in view of the delay—over nine years—in issuing an adverse Ruling on this allowance. See 26 U.S.C. 7805(b). We further note that Rev. Rul. 64-153 merely states that a dislocation allowance "is includible in the gross income of the recipient" and does not hold that the allowance is compensation for personal services subject to withholding and inclusion in wages reported on withholding tax statements. *Cf.* Rev. Rul. 59-236, C.B. 1959-2, 234.

As indicated at the outset, a favorable resolution of this matter is imperative. Dislocation allowances will be paid to over 340,000 servicemen in fiscal year 1965 with an expenditure of over 40 million dollars. The compensation position of our personnel has been falling behind that of other governmental and industrial employees for some time.[13] If service people are deprived of the tax benefits which Congress considered in setting their rates of basic

[13] See, *e.g.*, S. Rep. No. 387, 88th Cong., 1st Sess. 5 (1963).

pay,[14] our whole system of compensation will have to be re-examined. Our retention rates of career people are already greatly reduced because of the frequent changes of their duty assignments made according to the needs of the services.[15] Placing a tax on their dislocation allowances serves only to reduce further an already inadequate allowance.[16] If Rev. Rul. 64-153 is not revoked a significant portion of the recently enacted 1964 pay raise will be lost before it is received. Unlike private industry the uniformed services cannot change their compensation policies in response to unfavorable tax developments.

The favor of an early reconsideration of the legal and policy implications of your Ruling is respectfully requested.

Sincerely,

NORMAN S. PAUL

---

[14] See, *e.g.*, *Hearings on H.R. 3006* (To amend 37 U.S.C., etc.) (House Armed Services Comm.), 88th Cong., 1st Sess. 1423-1425 (1963).

[15] Id. *passim*.

[16] Note 11 *supra*.

EXHIBIT B

89TH CONGRESS 1ST SESSION H. R. 10607
IN THE HOUSE OF REPRESENTATIVES

AUGUST 23, 1965

MR. ROSENTHAL introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To amend the Administrative Expenses Act of 1946, as amended, to provide for reimbursement of certain moving expenses of employees, and to authorize payment of expenses for storage of household goods and personal effects of employees assigned to isolated duty stations within the continental United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (a) of section 1 of the Administrative Expenses Act of 1946 (60 Stat. 806, as amended; 5 U.S.C. 73b-1(a)), is amended by—

(1) striking the words "the Act of February 14, 1931" appearing in the first parentheses contained therein, and inserting in lieu thereof "section 4 of the Travel Expense Act of 1949 (63 Stat. 166, as amended; 5 U.S.C. 837)";

(2) striking the word "seven" appearing in the second parentheses contained therein, and inserting in lieu thereof the word "eleven";

(3) striking out of the first proviso contained therein the words "the Subsistence Expense Act of 1926 (5 U.S.C. 828)" and inserting in lieu thereof the words "section 5 of the Travel Expense Act of 1949 (63 Stat. 166, as amended; 5 U.S.C. 838)".

(b) Subsection (b) of section 1 of the Administrative Expenses Act of 1946 (60 Stat. 807, as amended; 5 U.S.C. 73b-1(b)), is amended by adding the following words immediately before the period at the end of the first sentence in the subsection ", except that payment of actual expenses may be made whenever, under regulations prescribed by the President, the head of the agency determines that such method of payment is more economical to the Government."

SEC. 2. The Administrative Expenses Act of 1946 (60 Stat. 806), as amended, is further amended by adding the following new sections:

"SEC. 23. Under such regulations as the President may prescribe and to the extent deemed necessary and appropriate, as provided therein, appropriations or other funds available to the departments for administrative expenses shall be available for the reimbursement of all or part of the following expenses of officers or employees for whom the Government pays expenses of travel and transportation under subsection (a) of section 1 of this Act:

"(1) The expenses of per diem allowance in lieu of the subsistence expenses of the immediate family of the officer or employee while en route between his old and new official stations, not in excess of the maximum per diem rates prescribed in or pursuant to section 3 of the Travel Expense Act of 1949 (63 Stat. 166, as amended; 5 U.S.C. 836).

"(2) The expenses of per diem allowance in lieu of subsistence of the officer or employee and his spouse, not in excess of the maximum per diem rates prescribed in the Travel Expense Act of 1949 (63 Stat. 166, as amended; 5 U.S.C. 836), and the expenses of transportation to seek permanent residence quarters at a new official station when both the old and new stations are located within the continental United States, excluding Alaska, provided that such expenses may be allowed only for one round trip in connection with each change of station of the officer or employee.

"(3) The subsistence expenses of the officer or employee and his immediate family for a period of thirty days while occupying temporary quarters when the new official station is located within the United States (including the District of Columbia, its territories and possessions, the Commonwealth of Puerto Rico, and the Canal Zone: *Provided,* That the period of residence in temporary quarters may be extended for an additional thirty days when the officer or employee moves to or from Hawaii, Alaska, the territories and possessions, the Commonwealth of Puerto Rico, and the Canal Zone, except that reimbursement for subsistence expenses actually incurred may not exceed an amount determined from such average daily rates per person as may be prescribed in such regulations, but not in excess of the maximum per diem rates prescribed in or pursuant to section 3 of the Travel Expense Act of 1949 (63 Stat. 166, as amended; 5 U.S.C. 836), for the localities in which the temporary quarters are located, for the first ten days of such period, two-thirds of such rates for the second ten days, and one-half for the balance of such period, including the additional thirty days.

"(4) The expenses of the sale of the residence (or the settlement of an unexpired lease) of the officer or employee at the old official station and purchase of a home at the new official station required to be paid by him when the old and new official stations are located within the United States (including the District of Columbia), its territories and possessions, the Commonwealth of Puerto Rico, and the Canal Zone, but reimbursement for brokerage fees on the sale of the residence shall not exceed such fees as are customarily charged in the locality where the residence is located and no reimbursement shall be made for losses on the sale of the residence. This provision applies regardless of whether the title to the residence or the unexpired lease is in the name of the officer or employee alone, in the joint names of the officer or employee and a member of

his immediate family, or in the name of a member of his immediate family alone.

"SEC. 24. Under such regulations as the President may prescribe and to the extent deemed necessary and appropriate, as provided therein, and notwithstanding other reimbursement authorized under this Act, an officer or employee who is reimbursed under section 1(a) or section 23 of this Act shall, if he has an immediate family, receive an amount equal to two weeks' basic compensation, or, if he does not have an immediate family, an amount equal to one week's basic compensation: *Provided,* That such amounts shall not exceed amounts determined from the maximum rate of grade GS-13 in the General Schedule of the Classification Act of 1949, as amended.

"SEC. 25. Under such regulations as the President may prescribe—

"(a) Whenever any civilian officer or employee (including any new appointee in accordance with section 7(b) of this Act, as amended) is assigned to a permanent duty station at an isolated location in the continental United States, excluding Alaska, to which he cannot take or at which he is unable to use his household goods and personal effects because of the absence of residence quarters at such location, nontemporary storage expenses or storage at Government expense in Government-owned facilities (including related transportation and other expenses), whichever is more economical, may be allowed such officer or employee under regulations issued by the head of the Executive Department or agency concerned. In no instance shall the weight of the property stored under this subsection, together with the weight transported under section 1 or section 7(b) of this Act, exceeded the total maximum weight the officer or employee would be entitled to have moved, and the period of nontemporary storage shall not exceed three years.

"(b) This section does not authorize reimbursement to officers and employees traveling under orders issued more than sixty days prior to the effective date of this section.

"SEC. 26. Under such regulations as the President may prescribe and notwithstanding the provisions of the fourth proviso of section 1(a) of this Act, in transfers between departments for reasons of reduction in force or transfer of function, expenses authorized under section 1, subsections (a) and (b) and subsections (e) and (f) other than expenses authorized in connection with transfers to foreign countries, and under sections 23 and 24 of this Act may be paid in whole or in part by the department from which the officer or employee is transferred or by the department to which he is transferred, as may be agreed upon by the heads of the departments concerned.

"SEC. 27. Under such regulations as the President may prescribe, a former officer or employee separated by reason of reduction in force or transfer of function who is reemployed within six months of the date of such separation by a nontemporary appointment at a different geographical location from that where such separation occurred may be allowed and paid the expenses authorized by section 1 of this Act, and may receive the benefits authorized by sections 23 and 24 of this Act, in the same manner as though he had been transferred to the location of reemployment from the location where separated in the interest of the Government without a break in service.

"SEC. 28. Notwithstanding the provisions of subsections (a) and (b) of section 1, and of sections 23, 24, 25, and 27 of this Act, the travel and transportation expenses, including storage of household goods and personal effects, and other relocation allowances shall not be allowed thereunder when a civilian officer or employee is transferred within the continental United States, excluding Alaska, unless and until such officer or employee shall agree in writing to remain in the Government service for twelve months follow-

ing his transfer, unless separated for reasons beyond his control and acceptable to the department or agency concerned. In case of violation of such agreement, any moneys expended by the United States under said sections of this Act on account of such officer or employee shall be recoverable from him as a debt due the United States."

SEC. 3. Regulations under this Act shall be prescribed within ninety days following the date of enactment but shall be retroactive to such date.

EXHIBIT C

THE WHITE HOUSE

TO THE CONGRESS OF THE UNITED STATES:

America expects—and receives—much from her public servants.

In every field of endeavor vital to the security of this Nation—from foreign affairs to science and technology to national defense—we depend on the career men and women of the Federal service for competence, devotion, loyalty, and responsibility.

I have been a part of this service for almost 35 years. I have seen it perform critical and vital tasks. Most of the time it has performed at its best—and that is the way we want it to stay.

I believe firmly that the merit system is the keystone of good government.

I believe that the public service is a profession of dignity, opportunity, and profound personal achievement.

I reject the proposition that government employment is somehow inferior to employment in business, in the professions, in university life, or in any other occupation. There can be no class system separating the men and women who are committed to the service of their fellow men or to the defense of their country.

I also believe strongly in the obligation of the Federal Government to be a good employer. And I define a good employer as one who

—demands excellence and rewards it

—is fair and just

—respects the dignity of his employees

—insists upon ethical standards and sets a good example

—practices no discrimination

—welcomes fresh ideas and new approaches

—fulfills his responsibilities to the community

—provides opportunities for growth and challenge

—combines prudent business judgment with enlightened policies on compensation and benefits.

We do not have two standards of what makes a good employer in the United States:—one standard for private enterprise and another for the Government. A double standard which puts the Government employee at a comparative disadvantage is short-sighted. In the long run, it costs more.

In all respects, save one, the Federal Government today is meeting the test of a good employer. In the last four years we have almost—but only almost—achieved adequate, up-to-date, and fair pay systems for all categories of Government personnel.

We must not cease our effort now.

In my Budget Message on January 25, 1965, I announced the appointment of a Special Panel on Federal Salaries to review Federal military and civilian pay levels.

That Panel presented its report to me on April 15. It is attached to this Message. I have been studying it carefully.

The report contains a series of recommendations concerning adjustment of Federal pay in the fiscal year 1966.

I endorse the proposals of the Panel and recommend early action by the Congress to authorize:

—An average increase of 3 percent in Federal civilian salaries.

—An average increase of 4.8 percent in compensation of all uniformed personnel, except enlisted personnel with under two years of service.

—A 2.7 percent increase in base pay of enlisted personnel with less than two years of service.

These proposed adjustments will restore the relationships between civilian and military pay established in 1963.

The adjustments will not bring us to full achievement of the comparability standard enunciated in the Federal Salary Reform Act of 1962, but they will prevent loss of ground already attained.

Before including the full effect in retirement plans, the proposed increases will have a total annual cost of approximately $853 million—$447 million for uniformed personnel and $406 million for civilian personnel. In order to hold the costs of pay adjustments in the fiscal year 1966 within amounts included in the Budget for that purpose, I recommend that the increases be made effective January 1, 1966.

Legislation to carry out these recommendations is attached. I ask that it be referred to the appropriate committees of the Congress for early consideration.

The pay adjustments proposed in this Message emphasize the obligation of the Federal Government to insist upon maximum return from every dollar spent on a salary.

All agencies of the executive branch are working hard to improve the productivity of their employees and to curtail outmoded activities. All agencies have established personnel control programs which should bring to a halt unwarranted increases in average grades and average salaries.

I am continuing my personal efforts to hold down employment. The most recent monthly report of the Civil Service Commission shows that there are now about 22,000

fewer civilian employees in the executive branch than in December, 1963.

New employees must replace many who leave, but additional employment will occur only when our responsibilities permit no other course of action.

I am proud of the progress we have made toward lean and fit competence in the discharge of Federal responsibilities. Adequate pay will help us to continue our advance toward that goal.

The report of the Panel proposes new procedures for acting upon compensation matters in the future.

The first proposal would establish a permanent mechanism for impartial review at four-year intervals of the structure and interrelationships of all Government salary systems. Following these reviews, the President would be authorized to propose changes in salary schedules for top positions in the executive, legislative, and judicial branches. The changes would go into effect automatically at a given date, unless disapproved by resolution of either House of the Congress. Other changes proposed by the President as a result of a quadrennial review would be acted upon through the regular processes for the enactment of legislation.

The second proposal would authorize a procedure for acting, between quadrennial reviews, upon such periodic adjustments in pay rates for Federal civilian and military personnel as may be warranted to keep pace with changes in pay rates elsewhere in the economy. Under this proposal, the President would continue to make prescribed reports annually to the Congress. When any such annual report includes recommendations for revision of salary rates, these revisions would go into effect automatically at a given date, unless disapproved by resolution of either House of the Congress.

I concur in these recommendations of the Panel.

Legislation to establish the first of these new and improved procedures is attached.

Amendments of existing law to make the second recommendation effective are included in the bills authorizing pay adjustemnts for civilian and uniformed personnel.

The civilian pay bill also includes an amendment of the Federal Salary Reform Act of 1962 which would carry out another of the Panel's recommendations. This amendment would give the President discretionary authority to make salary surveys and comparisons in additional fields of non-Federal employment.

Existing law limits the annual surveys and comparisons to "private enterprise." Collection and analysis of salary rate information in such fields of employment as State and local governments and non-profit institutions would give added assurance that Federal salary rates are kept in appropriate relationship with salary rates prevailing throughout our economy.

Drafts of legislation to carry into effect other important recommendations contained in the Panel's report will be promptly transmitted to the Congress. These drafts will propose to:

—Authorize certain civilian employees not now receiving premium pay for overtime to receive such pay on an equal basis with other civilian employees.

—Establish a coordinated and equitable system for payment of moving expenses to employees transferred for the convenience and benefit of the Government.

—Authorize payment of readjustment allowances to certain employees separated involuntarily from Federal employment through no fault of their own.

The report of the Special Panel and this Message largely take the place this year of the President's annual report

to the Congress, as required by the Federal Salary Reform Act of 1962. Nevertheless, the report and analysis of the Bureau of the Budget and the Civil Service Commission on the comparison of Federal and private enterprise salary levels, and the views of employee organizations, should be available to the Congress. I am transmitting them by separate communication.

With the enactment of the legislation recommended in this Message, we shall have taken still another series of steps in the most far-reaching revision of Federal compensation laws in the history of our country.

We shall be much nearer to full achievement of the comparability standard adopted by the Congress in 1962.

We shall have established for the first time sound procedures for maintaining interrelated salary systems for both civilian and military personnel, which will be based upon fair, clear, consistent, and up-to-date policies.

And we shall be in a far better position to attract and retain in Federal service the best talent in America.

I urge prompt consideration of these proposals. Their results will more than justify their costs.

LYNDON B. JOHNSON

THE WHITE HOUSE,
May 12, 1965.

EXHIBIT D

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D. C. 20415

May 20, 1965

Honorable John W. McCormack
Speaker of the House of
Representatives

Dear Mr. Speaker:

In accordance with the President's message of May 12, 1965, we are submitting with this letter, for the consideration of the Congress, proposed legislation which would authorize the reimbursement of certain of the moving expenses of civilian employees who are transferred in the interest of the Government to a place other than the one in which they have been living and working. There are enclosed a draft bill, a section analysis of the proposed bill, and a statement of purpose and justification.

The proposed bill covers four major types of employee moving expenses. First, with respect to transportation and storage of household goods, it would raise the current statutory limit on the weight of household goods shipped for which reimbursement can be made. Because of changes in the pattern of living of Federal employees in the nineteen years since enactment of the Administrative Expenses Act, the existing limit is not adequate to cover the weight of goods shipped by a substantial proportion of Federal employees. We believe that increasing the statutory weight limit from 7,000 pounds to 11,000 pounds will more adequately reflect these changing needs. The proposed bill would also allow agencies to choose whether to ship employees' goods by Government bill of lading or under the commuted rate system now generally used, whichever is more economical.

Employees or new appointees assigned to a permanent duty station at an isolated location in the continental United States (except Alaska) where there are no residence quarters other than barracks or furnished rooms, or the like, would be reimbursed for storage of household goods for up to three years or could have goods stored in Government owned facilities under regulations to be issued by the President. Alaska is excluded because storage of household goods for employees in Alaska is covered under Public Law 88-266.

Second, with respect to travel and subsistence allowances for employees and their families, the bill would permit reimbursement for the travel expenses of the immediate family while en route to the new official station (in addition to the cost of their transportation, which is already provided), round trip travel for the employee and his spouse to seek permanent quarters, and expenses while occupying temporary quarters for up to 30 days (or 60 days for certain locations where shipment of household goods takes more than 30 days).

All employees would not receive reimbursement for each of these types of expenses. Reimbursement would depend on actual expenses for these items, and would be limited by geographical considerations, except in the case of family travel to the new official station. Househunting trips would be limited to the continental United States (excluding Alaska). Subsistence for temporary quarters would be limited to non-foreign areas. Reimbursement would be at rates established by regulations of the President within per diem rates prescribed in or pursuant to section 3 of the Travel Expense Act of 1949, as amended.

Third, the proposed bill would permit reimbursement for certain costs of real estate transactions in accordance with regulations to be established by the President. Expenses the employee is required to pay in selling his home at the old official station (or settling an unexpired lease) and in

purchasing a home at the new official station could be reimbursed on an actual expense basis. Reimbursement would not be authorized for losses on the sale.

Fourth, employees would receive a flat allowance to cover miscellaneous expenses of their move not otherwise provided for. Single movers would receive an amount equal to one week's basic compensation, and employees with an immediate family would receive the equivalent of two week's basic compensation.

Although the bill is intended primarily for the benefit of civilian employees moving within the United States, a small number of employees engaged in overseas moves who are not covered by military or Foreign Service Act moving expense provisions would be covered under this bill.

They would not, however, be reimbursed under this bill for temporary quarters overseas. Also certain former employees whose moving expenses would have been paid if they could have been kept on the rolls until placed in a reduction-in-force or a transfer of function would be able to receive benefits under this bill if they obtained a nontemporary appointment to a Federal position within 6 months of their separation.

The Civil Service Commission is proposing this legislation both as a matter of equity to employees and as a matter of good administrative practice for Government. Underlying this proposal is the basic principle that when employees are transferred at the request of the Government the object is to improve the efficiency of the service. Transfers are usually made at Government convenience with respect to time, location, and frequency. Financial losses should, therefore, be largely assumed by the Government. A well-conceived and administered reimbursement plan will insure equitable treatment, encourage employees to transfer willingly, and implement internal promotion and career development programs.

We have data, obtained in a study of more than 5,000 employees, which clearly establishes that most Federal employees who move at the request of their agencies have to pay substantial costs of the types enumerated above out of their own pockets. This loss is not reimbursable despite the fact that the agency rather than the employee is both the initiator and the prime beneficiary of the move. We believe that this situation should be corrected, and that the Government should provide its employees more substantial protection against financial hardship resulting from moves they make at its request. While the proposed legislation does not assure the elimination of all losses, it is a major step forward.

Non-reimbursable costs of moving are significant deterrents to relocation for many employees. If experienced employees are unwilling or unable to take the financial loss, their agency loses their services. The agency may have to promote less well-qualified people or spend time and money finding, hiring, and training replacements. This is poor economy in the short run and is even poorer economy in the long run, for a reasonable degree of geographic mobility is an essential element in a sound career service.

The need for greater financial assistance to employees who move is increasing. For example, the current Department of Defense program to close certain installations may lead to a substantial number of employee moves. Other agencies have also been experiencing greater needs to shift employees as a result of automation or changing organizational requirements. Changes on such a scale will frequently be too large to permit absorption of excess employees into other Federal jobs in the community. In some cases, of course, the Federal establishment being closed is the only one of its kind in the vicinity. Therefore, employees may be faced with moves to distant places if they wish to continue their Federal careers. In these circumstances, it is difficult enough for employees and their

families to cut established ties and to resettle in an unfamiliar place without also having to pay out of their own pockets for ordinary, reasonable expenses associated with the move.

The proposed legislation should increase the acceptability of transfers necessary in the interest of the Government. It would bring Government's practices with respect to its civilian employees closer in line with the more progressive and realistic practices of private business. It deserves sympathetic consideration by the Congress.

In accordance with the provisions of the Act of July 25, 1956 (70 Stat. 652; 5 U.S.C. 642a), we estimate the Government-wide annual cost of the proposed legislation at about $22,000,000.

The proposed legislation will not involve any expenditure for personal services. Funds to pay the reimbursement authorized by the proposed legislation would be secured by the individual agencies through their regular appropriation requests to the Congress.

The Bureau of the Budget advises that enactment of the recommended bill will be consistent with the Administration's objectives.

A similar letter is being sent to the President of the Senate.

By direction of the Commission:

Sincerely yours,

(s) JOHN W. MACY, JR.
Chairman